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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID CHARLES PYLE,

Defendant and Appellant.

B208888

(Los Angeles County  
Super. Ct. No. KA082648, KA077956)

APPEAL from a judgment of the Superior Court of Los Angeles County, Harold J. Mulville, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

David Charles Pyle, in pro. per.; Anthony D. Zinnanti, under appointment by the Court of Appeal, and Law Offices of Anthony D. Zinnanti for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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David Pyle appeals from the judgment entered following his plea of no contest to utilizing a fortified house for the purpose of selling narcotics and his admission that he suffered a prior felony conviction under the “Three Strikes” law. Upon our review under *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

Three cases were involved in defendant’s plea and resulting sentence.

In 1991, defendant was convicted of attempted murder and was sentenced to state prison.

In February 2007, defendant pleaded guilty to possession of methamphetamine and admitted his 1991 attempted murder conviction as a “strike” prior. He was granted deferred entry of judgment and admonished that because of the strike prior he would not be eligible for Proposition 36 treatment if he did not comply with the terms of his deferred entry of judgment order. Rather, he would receive a mandatory state prison sentence which would be doubled under the Three Strikes law.

On April 2, 2008, a felony complaint was filed charging defendant with transporting methamphetamine, possessing methamphetamine for the purpose of sale, and utilizing a fortified house for the purpose of selling narcotics. The complaint further alleged defendant’s 1991 conviction as a strike prior. A probation officer’s report stated that on March 31, 2008, a search warrant was executed on defendant’s residence, during which methamphetamine and drug paraphernalia were found. The residence was equipped with surveillance cameras which could be simultaneously monitored from a computer in the bedroom.

At a hearing on April 2, 2008, deferred entry of judgment on the 2007 possession of methamphetamine case was terminated and criminal proceedings were reinstated.

At a hearing on April 18, 2008, on the current complaint, defense counsel made reference to an offer of a total prison term of 6 years, consisting of the low term of 3 years for utilizing a fortified house, doubled under the Three Strikes law, and a concurrent term for the 2007 possession of methamphetamine conviction. The court noted that the 2007 conviction included an admission of a prior strike and stated, “I think I’m required to run it consec under the statute. I can give him eight months doubled, one-

third [of] the midterm [in addition to the six years].” Defense counsel stated, “That does change the outlook,” and the matter was put on second call.

When proceedings resumed, the court stated it understood that defendant would enter a plea to one count of the complaint and admit the strike prior, and that the remaining two counts would be dismissed. Defendant would also be found in violation of probation on the 2007 possession of methamphetamine case based on his 2008 plea. He would be sentenced to the 3-year lower term, doubled under the Three Strikes law to 6 years on the current case, and a consecutive midterm of 8 months, doubled under the Three Strikes law to 16 months, on the 2007 case, for a total term of 7 years 4 months.

Defendant stated that he understood what the court had said. The court further explained that defendant would be required to serve 80 percent of his sentence, that defendant’s previous “half-time” credit was based on prior law, and that even though defendant’s “strike” conviction of attempted murder was sustained before the Three Strikes law was implemented, the provisions of that law applied to this case.

Following appropriate admonishments, including informing defendant that his maximum exposure on the charges was 13 years 4 months, defendant entered a plea of no contest to utilizing a fortified house for the purpose of selling narcotics and admitted having sustained the 1991 conviction of attempted murder. Defendant was also found in violation of probation on the 2007 case. In accordance with the plea agreement, defendant was sentenced to 7 years 4 months in state prison.

Defendant in propria persona filed a notice of appeal and request for certificate of probable cause. The request was denied. We appointed counsel to represent defendant on appeal. Counsel filed a brief under *People v. Wende, supra*, 25 Cal.3d 436, 441–442, in which no issues were raised. We then sent letters to defendant and appointed counsel, directing counsel to immediately forward the appellate record to defendant and notifying defendant that within 30 days he could personally submit any contentions or issues that

he wished us to consider. Defendant responded with a supplemental brief<sup>1</sup> and a request for judicial notice.<sup>2</sup>

Although defendant's arguments refer to several legal principles, as stated in the supplemental brief, "despite the fact that I have more than a single claim, my claims all have to do with sentencing." Specifically, defendant claims that it was improper to sentence him to more than the 6-year term contemplated by the original plea negotiation. We disagree.

In conjunction with both his 2007 and 2008 cases, defendant admitted that he had been convicted in 1991 of attempted murder under Penal Code sections 664 and 187, subdivision (a). Although defendant's 1991 strike prior conviction was sustained before implementation of the Three Strikes law, courts have consistently held that utilizing such a prior conviction to sentence under the Three Strikes law does not violate due process and ex post facto considerations. (See, e.g., *People v. Gray* (1998) 66 Cal.App.4th 973, 995; *People v. Brady* (1995) 34 Cal.App.4th 65, 71–72.) Nor did the court below have discretion to impose concurrent sentences for defendant's 2007 and 2008 convictions because the underlying crimes were not committed on the same occasion or arose from the same set of operative facts. (*People v. Deloza* (1998) 18 Cal.4th 585, 590–591.)

Defendant entered a free and voluntary plea with the knowledge that he would be sentenced to 7 years 4 months in state prison. He has not shown that this plea was affected by any ignorance or incorrect advice on the part of his counsel or how he might have benefited had counsel asked for leniency under *People v. Superior Court (Romero)*

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<sup>1</sup> The supplemental brief is alternatively captioned as a memorandum in support of a September 2008 petition for extraordinary relief filed by defendant in this court seeking issuance of a certificate of probable cause. The petition was denied on October 15, 2008. (*Pyle v. Superior Court*, B210862.)

<sup>2</sup> The request for judicial notice is granted.

(1996) 13 Cal.4th 497. The arguments in defendant's supplemental brief must therefore be rejected.

We have examined the entire record and are satisfied that defendant's counsel has fully complied with his responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

### **DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

WEISBERG, J.\*

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\* Retired Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.